

CHAPTER 79
REAL ESTATE TRANSFER TAX AND DECLARATIONS OF VALUE

[Prior to 12/17/86, Revenue Department[730]]

701—79.1(428A) Real estate transfer tax: Responsibility of county recorders.

79.1(1) *Forms.* County recorders shall use only forms provided by the department of revenue and finance for the collection of real estate transfer tax and the recording and reporting of such tax collections.

79.1(2) *Monthly reports.* County recorders shall submit a report to the department of revenue and finance on or before the tenth day of each month enumerating real estate transfer tax collection information for the preceding month. This report shall be submitted on forms prescribed by the department of revenue and finance and shall contain such information as is deemed necessary by the department.

79.1(3) *Evidence of payment.* The recorder shall enter the tax payment amount, date of payment, and initials of the recorder or authorized employee of the recorder on the face of the instrument of conveyance presented for recording.

79.1(4) *Recording refused.* The county recorder shall refuse to record any deed, instrument, or writing regardless of any statement by the grantor, grantee, or their agents that the transaction is exempt pursuant to Iowa Code section 428A.2, if, in the recorder's judgment, additional facts are necessary to clarify the taxable status of the transfer or determine the full consideration paid for the property. The county recorder may request from the grantor, grantee, or their agents, any information necessary to determine the taxable status of the transfer or the full amount of consideration involved in the transaction. County recorders under no circumstance shall record any deed or instrument of conveyance for which the proper amount of real estate transfer tax has not been collected. This applies to the collection of tax in excess of the amount due for the actual amount of consideration as well as situations in which an insufficient amount of tax has been collected.

79.1(5) *Refunds or underpayments.*

a. Refunds. County recorders shall not refund any overpayment of a real estate transfer tax. The grantor of the real property for which the real estate transfer tax has been overpaid shall petition the state appeal board for a refund of the overpayment amount paid to the treasurer of state. A refund of the remaining portion of the overpayment shall be petitioned from the board of supervisors of the county in which the tax was paid.

b. Underpayments. The county recorder shall collect any amount of tax found to be due. If the county recorder is unable to collect the tax, the director of revenue and finance shall collect the tax in the same manner as income taxes are collected and pay the county its proportionate share.

79.1(6) *Multiple parcels.* If the real estate conveyance contains multiple parcels, the tax is to be paid to each county in which the property is located based on the consideration paid for each property.

This rule is intended to implement Iowa Code chapter 428A as amended by 2001 Iowa Acts, Senate File 372 and House File 736.

701—79.2(428A) Taxable status of real estate transfers.

79.2(1) *Federal rules and regulations.* In factual situations not covered by these rules and involving those portions of Iowa law which are consistent with the former federal statutes (26 USCA 4361) that imposed a real estate transfer tax, the department of revenue and finance and county recorders shall follow the federal rules and regulations in administering the provisions of Iowa Code chapter 428A. (1968 O.A.G. 643)

79.2(2) *Transfer of realty to a corporation or partnership.* Capital stock, partnership shares and debt securities received in exchange for real property constitutes consideration which is subject to the real estate transfer tax. Where the value of the capital stock is definite or may be definitely determined in a dollar amount, the specific dollar amount is subject to the tax. Where the value of the capital stock is not definitely measurable in a dollar amount, the tax imposed is to be calculated on the fair market value of the realty transferred. For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21. (1976 O.A.G. 776)

Real estate transfer tax is not due when real property is conveyed to a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2 in an incorporation or organization action where the only consideration is the issuance of capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. Actual consideration other than these shares or debt securities is subject to real estate transfer tax.

79.2(3) *Trades of real estate.* Real estate transfers involving the exchange of one piece of real property for another are transfers subject to the real estate transfer tax. Each grantor of the real estate is liable for the tax based on the fair market value of the property received in the trade as well as other consideration including but not limited to cash and assumption of debt. (1972 O.A.G. 654)

For purposes of this rule, fair market value shall be as defined in Iowa Code section 441.21.

79.2(4) *Conveyance to the United States government or the state of Iowa.* Any conveyance of real estate to the United States or any agency or instrumentality thereof or to the state of Iowa or any agency, instrumentality, or political subdivision thereof not exempt from the real estate transfer tax pursuant to Iowa Code section 428A.2, is subject to the real estate transfer tax. (1968 O.A.G. 579) An exception to this rule is any conveyance to the United States Department of Agriculture, Farmers Home Administration, which is specifically exempted by federal law (7 USCS §1984).

79.2(5) *Conveyance of property on leased land.* The transfer of buildings or other structures located on leased land is subject to the real estate transfer tax. The fact that the person who owns a building or other structure does not own the land upon which the property is located does not exempt this type of conveyance from the real estate transfer tax. (1972 O.A.G. 318)

79.2(6) *Mortgage default.* In the factual situation where a defaulting mortgagor issues a deed or other conveyance instrument to the mortgagee as satisfaction of the mortgage debt, the transaction is subject to the real estate transfer tax. The consideration upon which the tax is calculated is the outstanding unsatisfied mortgage debt.

However, as an exception to this rule, a conveyance of real property to lienholders in lieu of foreclosure or foreclosure action is exempt from real estate transfer tax.

79.2(7) *Completion of contract.* A deed or other conveyance instrument given at the time of completion of a single real estate contract is subject to the real estate transfer tax. The tax is to be computed on the full amount of the purchase price as stated in the contract and not solely on the last installment payment made prior to the issuance of the deed or other conveyance instrument. If the original contract is assigned to a third party or parties prior to fulfillment of such contract, the tax is to be computed only on the original contract price upon completion of the contract.

When a single deed or other conveyance instrument is given at the time of completion of multiple successive real estate contracts, separate taxes are to be computed and paid based upon the full purchase price stated in each contract. For example, if A sells real estate to B on an installment contract, and then B sells the same property to C on another installment contract, and subsequently both A and B transfer their respective interests in the property to C via one deed, A is liable for a tax computed on the full purchase price stated in the original contract to which A was a party and B is liable for a tax computed on the full purchase price stated in the subsequent contract to which B was a party.

79.2(8) *Assignments of contract.* Assignments of real estate contracts by contract sellers and contract buyers are not subject to the real estate transfer tax. (1970 O.A.G. 605)

79.2(9) *Corporate and partnership dissolution.* A conveyance of realty by a corporation or partnership in liquidation or in dissolution to its shareholders or partners subject to the debts of the corporation or partnership is a conveyance subject to the real estate transfer tax. However, if there are no debts and the conveyance is made solely for the cancellation and retirement of the capital stock or dissolution, the tax does not apply.

Real estate transfer tax is not due when real property is conveyed from a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in Iowa Code section 428A.2 to its shareholders, partners, or members in a dissolution action where the only consideration is capital stock, partnership shares, or debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, including the assumption of debts by the shareholders, partners, or members. Actual consideration other than these shares or debt securities is subject to the real estate transfer tax.

79.2(10) *Security instruments.* Any deed or instrument given exclusively to secure a loan or debt is not subject to the real estate transfer tax.

79.2(11) *Marriage dissolution exemption.* Marriage dissolution exemption from the real estate transfer tax provided in Iowa Code section 428A.2(16) applies only to real property conveyances between former spouses specifically mandated by a dissolution decree.

79.2(12) *Family debt cancellation exemption.* The family debt cancellation exemption from the real estate transfer tax provided in Iowa Code section 428A.2(11) applies only to real estate conveyances between husband and wife, or parent and child and indebtedness between these parties.

The amount of indebtedness subject to exemption shall not exceed the fair market value of the property being transferred.

EXAMPLE 1. A son is indebted to his father for \$10,000. The son transfers real property with a fair market value of \$12,000 to his father as satisfaction of the indebtedness. No real estate transfer tax is due in this situation.

EXAMPLE 2. A son is indebted to his father for \$10,000. The son transfers real property with a fair market value of \$4,000 to his father as satisfaction of the indebtedness. Real estate transfer tax is due on \$6,000 in this situation.

79.2(13) *Assumption of debt.* Any outstanding debt on the property conveyed that is not assumed by the grantee is not to be included as consideration in computing the amount of real estate transfer tax due.

EXAMPLE. Property with a mortgage of \$40,000 is transferred from A to B. B pays A \$60,000 but does not assume the \$40,000 mortgage. The real estate transfer tax is to be computed on the \$60,000 cash payment only. If B had assumed the mortgage in addition to making the cash payment, the real estate transfer tax would be computed on \$100,000 (the sum of the payment and mortgage).

79.2(14) *Mergers, consolidations, and reorganizations.* Conveyances of real estate resulting from corporate or limited liability company mergers, consolidations, or reorganizations are exempt from the real estate transfer tax. The following definitions are intended to be general guidelines in determining eligibility for exemption under this subsection.

“Merger” means the uniting of two or more corporations or companies into one corporation or company in such manner that the corporation or company resulting from the merger retains its existence and absorbs the other constituent corporation(s) or company(ies) which thereby lose its or their existence.

“Consolidation” means the uniting of two or more corporations or companies into a single new corporation or company, all of the constituent corporations or companies thereby ceasing to exist as separate entities.

“Reorganization” means the transfer of substantially all of the assets of one corporation or company to another corporation or company where the persons having an interest in the old corporation or company maintain substantially the same interest in the new corporation or company.

This rule is intended to implement Iowa Code section 428A.1 as amended by 1996 Iowa Acts, chapter 1167, and section 428A.2 as amended by 1996 Iowa Acts, chapter 1170.

701—79.3(428A) Declarations of value: Responsibility of county recorders and city and county assessors.

79.3(1) *Forms and procedures.* County recorders and county and city assessors shall use only the declaration of value forms and procedures prescribed and provided by the director of revenue and finance for reporting real estate transfers.

79.3(2) *Report of sales.* County recorders and city and county assessors shall complete the appropriate portions of the real estate transfer-declaration of value form for each real estate transfer for which a declaration of value has been completed by the buyer, seller, or agent. The completion of the real estate transfer-declaration of value forms constitutes the preparation of a quarterly sales report to the director of revenue and finance as required by Iowa Code section 421.17(6).

79.3(3) *Transmittal of forms.* Real estate transfer-declaration of value forms filed with the county recorder shall be transmitted promptly to the appropriate assessor. City and county assessors shall transmit to the department of revenue and finance within 60 days of the end of each calendar quarter all real estate transfer-declaration of value forms received from the county recorder during that calendar quarter. Under no circumstances shall the assessor retain any real estate transfer-declaration of value form longer than designated in this subrule.

79.3(4) Completion of forms. County recorders and city and county assessors shall complete declaration of value forms in accordance with instructions issued by the department. The assessed values entered on the forms are to be the final values as of January 1 of the year in which the transfer occurred.

This rule is intended to implement Iowa Code section 428A.1.

701—79.4(428A) Certain transfers of agricultural realty.

79.4(1) In determining whether agricultural realty is purchased by a corporation, limited partnership, trust, alien, or nonresident alien for purposes of providing information required for such transfers by Iowa Code section 428A.1, the definitions in this rule shall apply.

79.4(2) Corporation defined. “Corporation” means a domestic or foreign corporation and includes a nonprofit corporation and cooperatives.

79.4(3) Limited partnership defined. “Limited partnership” means a partnership as defined in Iowa Code section 545.1 and which owns or leases agricultural land or is engaged in farming.

79.4(4) Trust defined. “Trust” means a fiduciary relationship with respect to property, subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it. A trust includes a legal entity holding property as a trustee, agent, escrow agent, attorney-in-fact, and in any similar capacity.

Trust does not include a person acting in a fiduciary capacity as an executor, administrator, personal representative, guardian, conservator or receiver.

79.4(5) Alien defined. “Alien” means a person born out of the United States and unnaturalized under the Constitution and laws of the United States. (*Breuer v. Beery*, 189 N.W. 714, 194 Iowa 243, 244 (1922).)

79.4(6) Nonresident alien defined. “Nonresident alien” means an alien as defined in subrule 79.4(5) who is not a resident of the state of Iowa.

This rule is intended to implement Iowa Code section 428A.1.

701—79.5(428A) Form completion and filing requirements.

79.5(1) Real estate transfer—declaration of value form. A real estate transfer—declaration of value form shall be completed for any deed, contract, instrument or writing that grants, assigns, transfers or otherwise conveys real property, except those specifically exempted by law, if the document presented for recording clearly states on its face that it is a document exempt from the reporting requirements as enumerated in Iowa Code section 428A.2, subsections 2 to 13 and 16 to 21, or is a deed given in fulfillment of a previously recorded real estate contract. A real estate transfer—declaration of value form is not required for any transaction that does not grant, assign, transfer or convey real property.

79.5(2) Real estate transfer—declaration of value: Real estate transfer tax. Requirements for completing real estate transfer-declaration of value forms or exceptions from filing the forms shall not be construed to alter the liability for the real estate transfer tax or the amount of such tax as provided in Iowa Code chapter 428A.

79.5(3) Agent defined. As used in Iowa Code section 428A.1, an agent is defined as any person designated or approved by the buyer or seller to act on behalf of the buyer or seller in the real estate transfer transaction.

79.5(4) *Government agency filing requirements.* The real estate transfer-declaration of value form does not have to be completed for any real estate transfer document in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantor, assignor, transferor or conveyer or for any transfer in which the state of Iowa or any agency, instrumentality or political subdivision thereof is the grantee or assignee where there is no consideration. However, any transfer in which any unit of government is the grantee or assignee where there is consideration is subject to the real estate transfer-declaration of value filing requirements (1980 O.A.G. 92) and any transfer to which the United States or any agency or instrumentality thereof is a party to the transfer is subject to the real estate transfer-declaration of value filing requirements. An exception to this subrule is conveyances for public purposes occurring through the exercise of the power of eminent domain.

79.5(5) *Recording refused.* The county recorder shall refuse to record any document for which a real estate transfer-declaration of value is required if the form is not completed accurately and completely by the buyer or seller or the agent of either. The declaration of value shall include the social security number or federal identification number of the buyer and seller and all other information required by the director of revenue and finance, (*Iowa Association of Realtors et al v. Iowa Department of Revenue*, CE 18-10479, Polk County District Court, February 4, 1983.) However, if having made good faith effort, the person or person's agent completing the declaration of value is unable to obtain the social security or federal identification number of the other party to the transaction due to factors beyond the control of the person or person's agent, a signed affidavit stating that the effort was made and the reasons why the number could not be obtained shall be submitted with the incomplete declaration of value. The declaration of value with attached affidavit shall be considered sufficient compliance with Iowa Code section 428A.1 and the affidavit shall be considered a part of the declaration of value subject to the provisions of Iowa Code section 428A.15.

79.5(6) *Multiple parcels.* Separate declarations of value are to be submitted to each county recorder if the real estate conveyed consists of parcels located in more than one county. The consideration paid for each property must be separately stated on the declaration of value or the recorder shall refuse to record the instrument of conveyance.

This rule is intended to implement Iowa Code sections 428A.1, 428A.2, and 428A.4 as amended by 1999 Iowa Acts, chapter 175.

701—79.6(428A) Public access to declarations of value. Declarations of value are public records and shall be made available for public inspection in accordance with Iowa Code chapter 68A.

This rule is intended to implement Iowa Code chapter 428A.

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